# MEMORANDUM OF AGREEMENT for the ESTABLISHMENT OF OPERATIONS of the

## MID-REGION METROPOLITAN PLANNING ORGANIZATION

This Memorandum of Agreement, hereinafter referred to as "Agreement", is made and entered into, by and between:

- the City of Albuquerque, the City of Belen, the City of Rio Communities, the City of Rio Rancho, the County of Bernalillo, the County of Sandoval, the County of Valencia, the Town of Bernalillo, the Town of Edgewood, the Town of Peralta, the Village of Bosque Farms, the Village of Corrales, the Village of Los Lunas, the Village of Los Ranchos de Albuquerque, and the Village of Tijeras, which are hereinafter collectively referred to as "Local Governments", and
- the Pueblo de Cochiti, the Pueblo of Isleta, the Pueblo of Laguna, the Pueblo of San Felipe, the Pueblo of Sandia, the Pueblo of Santa Ana, the Pueblo of Santo Domingo, and the Navajo Nation To'hajiilee Chapter, which are hereinafter collectively referred to as "Tribal Governments", and
- the Albuquerque Public School District, the Belen Consolidated School District, the Bernalillo Public School District, the Los Lunas Public School District, and the Rio Rancho Public School District, which are hereinafter collectively referred to as "School Districts", and
- the Albuquerque Metropolitan Arroyo and Flood Control Authority, the Eastern Sandoval County Arroyo and Flood Control Authority, the Southern Sandoval County Arroyo and Flood Control Authority, and the Middle Rio Grande Conservancy District, which are hereinafter collectively referred to as "Specialized Agencies", and
- the City of Albuquerque Transit Department (a.k.a. ABQ Ride), and the Rio Metro Regional Transit District, which are hereinafter collectively referred to as "Transit Operators", and the Mid-Region Council of Governments, hereinafter referred to as "MRCOG", and all of the entities above are hereinafter collectively referred to as the "Parties".

WHEREAS, MRCOG (formerly called the Middle Rio Grande Council of Governments) was established under the laws of the State of New Mexico as a consortium of various governments and agencies; and

WHEREAS, on December 11, 1973, the Governor of the State of New Mexico designated MRCOG as the Metropolitan Planning Organization (MPO) pursuant to Section 112 of the Federal Highway Act of 1973 for the Albuquerque Metropolitan Planning Area; and

WHEREAS, on December 19, 2002 in resolution R-02-06 MRCOG, the MRCOG Board of Directors approved Bylaws for the Metropolitan Transportation Board; and

WHEREAS, the Bylaws of the Metropolitan Transportation Board (MTB) designates the MTB as the "body of local officials responsible for determining transportation policy for the Albuquerque Metropolitan Planning Area" and whose "role is to provide policy guidance in the development of transportation plans and programs and serve as the local approval body for such plans and programs"; and

WHEREAS, the functions of the Mid-Region Metropolitan Planning Organization have been placed under the governance of the MTB, consequently, it operates as a division of MRCOG for the purpose of overseeing, directing, and establishing comprehensive transportation planning and policies to carry out the provisions of Title 23 and Title 49 United States Code related to Metropolitan Planning; and

WHEREAS, it is recognized that the Tribal Governments each maintain their status as sovereign nations in accordance with applicable treaties ratified by the United States government, federal court cases, executive orders, and other laws established by the federal government; and

WHEREAS, as a result of the 2010 United States Census, the Bureau of the Census expanded the Albuquerque Urbanized Area, established the Los Lunas Urbanized Area, and revised the Santo Domingo Urban Cluster; and

WHEREAS, the population of the Albuquerque Urbanized Area is greater than 200,000 therefore, under federal regulations, the metropolitan planning area is also a Transportation Management Area (TMA).

WHEREAS, on February 27, 2013, the Governor of the State of New Mexico in accordance with 23 CFR 450.312 established the revised boundaries of the Albuquerque Metropolitan Planning Area (AMPA) and the corresponding Transportation Management Area (TMA) in accordance with 23 CFR 420.304(i);

NOW THEREFORE, IT IS MUTUALLY agreed between the Parties:

## Section 1 – Definitions and Abbreviations

The following definitions and abbreviations:

AMPA – the Albuquerque Metropolitan Planning Area established in accordance with 23 CFR 450.312. The AMPA boundary coincides with the TMA boundary.

CFR - Code of Federal Regulations

FHWA – the Federal Highway Administration of the USDOT.

FTA – the Federal Transit Administration of the USDOT.

MPO – Metropolitan Planning Organization

MRCOG – the Mid-Region Council of Governments of New Mexico the designated metropolitan planning organization for the AMPA.

MRMPO - the Mid-Region Metropolitan Planning Organization, a division of MRCOG

MTB - Metropolitan Transportation Board of MRMPO

NMDOT - the New Mexico Department of Transportation

NMSA - New Mexico Statues Annotated

Rio Metro – the Rio Metro Regional Transit District

TMA – the Transportation Management Area established in accordance with 23 CFR 450.304(i). The TMA boundary coincides with the AMPA boundary.

USDOT – United States Department of Transportation which includes the Federal Highway Administration and the Federal Transit Administration.

#### Section 2 - Authority

The authority under which the Parties have entered into this agreement are Federal Regulation 23 CFR 450.314; Sec. 3-18-1, Seq. NMSA 1978 (Municipal Code); Sec. 4-37-1 et. Seq. NMSA 1978 (County Ordinance); Sec. 13-1-44, Sec. 13-1-111 through Sec. 13-1-117 and Sec. 13-1-136 NMSA 1978 (Procurement Code).

## Section 3 - Effective Term

This Agreement shall become effective upon approval by the Metropolitan Transportation Board of the Mid-Region Metropolitan Planning Organization, the Board of Directors of the Mid-Region Council of Governments, and a majority of the Parties who are members of the MTB as of January 1, 2016 including the entities required to be part of the MTB, with the method of approval determined by each Party.

This Agreement shall remain in effect until superseded by a subsequent agreement or terminated by the same process as its approval. Upon termination of this Agreement, all work under this Agreement shall immediately cease and no further funds shall be expended by MRCOG without prior written approval of NMDOT.

This Agreement supersedes all previous joint powers agreements or other agreements or parts of other agreements which establish the parameters for the operation of the Mid-Region Council of Governments as the metropolitan planning organization. However, the Cooperative Agreements as may be amended and renewed, between NMDOT and MRCOG remain in effect.

This Agreement may be amended in accordance with Section 21.

#### **Section 4 - Fiscal and Administrative Management**

The Mid-Region Metropolitan Planning Organization (MRMPO) is a division of the Mid-Region Council of Governments (MRCOG) which is the designated MPO for the Albuquerque Metropolitan Planning Area (AMPA). MRCOG shall be responsible for the accounting and administration of all funds utilized to operate MRMPO and for providing staff to fulfill MPO work tasks and assignments.

There shall be an MPO Officer who shall be an employee of MRCOG designated by the MTB who shall be responsible to monitor and insure that all expenditures by MRMPO shall be done in accordance with the requirements of the New Mexico Procurement Code and all applicable federal and state laws. In addition, the MPO Officer shall insure that all expenditures of metropolitan planning funds received under Title 23 U.S.C. Section 134 and Title 49 U.S.C. Section 5303, shall be done in accordance with all applicable federal and state requirements.

## Section 5 - MRMPO Participation

All Parties, except MRCOG, the City of Albuquerque, and Rio Metro shall be entitled to choose one of three levels of participation in MRMPO.

- Full Voting Membership the Party is entitled to voting representation on the MTB in accordance with the Bylaws and voting representation on committees per committee bylaws or guidelines. The Party's representation counts toward a quorum for the meetings.
- 2). Associate Membership the Party is entitled to non-voting representation, to fully participate in all discussions on the MTB in accordance with the Bylaws and is entitled to non-voting representation on committees per committee bylaws or guidelines. The Party's representation does not count toward a quorum for the meetings.
- 3). Nonparticipating the Party does not have representation on the MTB or its committees. The Party may participate as a member of the public.

All Parties, regardless of their level of participation in MRMPO may submit project proposals to compete for federal transportation funding contingent upon eligibility requirements and in accordance with the *TIP Policies and Procedures*.

All Parties except the City of Albuquerque, Rio Metro, and MRCOG may change its level of participation at any time at the discretion of the Party.

A. The City of Albuquerque which includes the city's transit department, ABQ Ride, and

- Rio Metro shall be required to have Full Voting Membership in MRMPO. [Reference 23 CFR 450.310(b) and (h) and MAP-21.]
- B. MRCOG, as the designated MPO, is not entitled to voting representation on the MTB; MRCOG staff assigned to MRMPO duties serve as staff for the MTB and work under the direction of the MTB providing recommendations and advice.

Membership on the MRCOG Board of Directors shall not be a requirement for participation or membership on the MTB or its committees and subcommittees.

## Section 6 - Governance

The Mid-Region Council of Governments is governed by a Board of Directors which places authority for transportation planning (per 23 USC 134 and 49 USC 5300) under the governance of the Metropolitan Transportation Board (MTB) creating the Mid-Region Metropolitan Planning Organization as a division of MRCOG. The MRCOG Board of Directors shall approve all revisions and amendments to the MTB Bylaws.

The Metropolitan Transportation Board (MTB) is the governing body for the Mid-Region Metropolitan Planning Organization (MRMPO). The MTB shall operate in accordance with its Bylaws which may be amended from time to time and are hereby appended to this agreement. (Future amended Bylaws shall be considered part of this agreement).

- A. The MTB shall consist of voting member representatives and associates (or alternates) in accordance with its Bylaws. Voting shall be conducted, and MTB officers elected in accordance with the Bylaws.
- B. The MPO Officer and MRCOG employees shall serve as staff for the MTB and shall be responsible for the development, distribution, public notification, and archive of agendas, minutes and other records in compliance with all applicable statues.
- C. The MTB may establish standing committees and ad hoc committees in accordance with its Bylaws.
  - 1. Committees shall operate under rules and structure established by the MTB and in accordance with the committee's bylaws or guidelines.
- D. The Bylaws shall be amended to conform to all new, future federal requirements.

#### Section 7 - Purpose

It is therefore agreed that, pursuant to the provisions of Title 23 and Title 49 United States Code related to Metropolitan Planning and other applicable regulations issued by the U.S. Department of Transportation (USDOT) and its component divisions, the Parties will "carry out a continuing cooperative and comprehensive multimodal transportation planning process that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution and encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 USC 134(h) and 49 USC 5303(h)" [23 CFR 450.300 & 304].

A. The transportation planning and programming process shall cover the Metropolitan Planning Area and corresponding Transportation Management Area (TMA) established February 27, 2013 by the Governor of the State of New Mexico in accordance with 23 CFR 450.312. This area will be referred to hereinafter as the Albuquerque Metropolitan Planning Area (AMPA).

- 1. The AMPA boundary may be revised from time to time in accordance with 23 CFR 450.312 and shall be reviewed following the official release of each U.S. Decennial Census and U.S. Census Bureau-defined urbanized area boundaries.
- B. The Mid-Region Metropolitan Planning Organization of the Mid-Region Council of Governments shall perform the following functions:
  - UPWP Develop and publish a Unified Planning Work Program (UPWP) in accordance with 23 CFR 420.111, 23 CFR 450.304, 23 CFR 450.308 and FTA Circular C 8100.1C-Chapter II. The UPWP shall describe all transportation planning activities the MPO intends to undertake in the period covered by the UPWP.
  - 2. **MTP** Periodically prepare, update and revise as necessary, a long-range, Metropolitan Transportation Plan (MTP) in accordance with 23 CFR 450.
  - 3. **TIP** Periodically prepare, update and revise as necessary, a short-range Transportation Improvement Program (TIP) in accordance with 23 CFR 450.
    - a). MRMPO shall maintain, update and revise as necessary policies and procedures for the development, management and revision of the TIP in conformance to 23 CFR 450.316(e).
  - 4. **Annual Listing** Develop the Annual Listing of Obligated Projects in conformance to 23 CFR 450.332.
  - 5. **PPP** Periodically update and revise as necessary, a Public Participation Plan (PPP) in accordance with 23 CFR 450.316.
  - 6. **CMP** Maintain and periodically update and revise as necessary a Congestion Management Process (CMP) in accordance with 23 CFR 450.
  - 7. **ITS** Maintain and periodically update and revise as necessary the Regional ITS Architecture in accordance with 23 CFR 450 and 23 CFR 940.
  - 8. **Model** Maintain a travel demand forecast model that incorporates traffic count data and socioeconomic conditions (population, employment, and land use) for the area within the AMPA.
  - 9. **Mobile-Source Air Quality** coordinate with the local air quality board(s) and agencies, NMDOT, and the New Mexico Environment Department in reviewing air quality, identifying strategies to reduce mobile-source emissions, and if applicable, determining air quality conformity for the MTP and TIP.
  - 10. **SLRP** Cooperatively work with NMDOT in the development, update and revisions of the State's long range transportation plan.
  - 11. **STIP** Cooperatively work with NMDOT in the development, management, update, and revisions of the Statewide Transportation Improvement Program (STIP).
  - 12. **Federal Requirements** Cooperatively work with NMDOT in the implementation of federal legislation requirements such as, but not limited to: establishing performance measures and targets, establishing performance-based transportation planning processes and other areas required by federal legislation and/or regulations.
  - 13. **Financial** Manage the expenditures of Metropolitan Planning (PL) funds received under Title 23 U.S.C. Section 134 and Title 49 U.S.C. Section 5303 and other funds received from the federal government or NMDOT in conformance to all applicable federal and state laws, regulations, and administrative codes and 2 CFR 200.
    - a). MRCOG shall cooperatively with NMDOT and the cognizant federal agency, develop, as needed, an indirect cost allocation plan in accordance with 2 CFR 200.
    - b). MRCOG shall have an external audit conducted annually and provide a copy

- of the final audit report to NMDOT and have it available for review by the general public.
- c). NMDOT, the New Mexico State Auditor and the Comptroller General of the United States General Accounting Office and their authorized representatives shall have access to all documents, work papers, deliverables, or other data in whatever form that pertain to this Agreement. The MRCOG shall cooperate with all state and federal auditors and shall supply copies of any requested materials that pertain to this Agreement.
- d). NMDOT shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of NMDOT to recover excessive or illegal payments.
- 14. **Reporting and Reimbursements** Prepare and disseminate reports regarding progress made on work described in the UPWP and invoice NMDOT for said work, in accordance with the processes and procedures outlined in the *NMDOT Planning Procedures Manual*.
- 15. **Agreements** Enter into agreements with NMDOT, Local Governments, Tribal Governments, School Districts, Specialized Agencies, Transit Operators, and other federal, state or local agencies for funding and other matters deemed beneficial to the metropolitan planning process by the MTB and/or MRCOG.
- 16. **Future Requirements** MRMPO shall undertake future transportation planning efforts which may be established and funded under federal laws and regulations.
- 17. **Miscellaneous** Take such other actions as may be necessary as directed and approved by the MTB or MRCOG.
- C. Compliance with federal, state, and local laws and regulations for the planning, scoping, environmental documentation, design, construction, quality assurance, equipment purchases, project implementation, and accounting and bookkeeping of capital projects utilizing federal funds shall remain the responsibility and duty of the project sponsor (a.k.a. "lead agency") listed in the Transportation Improvement Program.

Nothing in this Agreement shall be deemed to prohibit MRMPO and MRCOG from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process. [Reference 23 CFR 450.310(f).]

#### Section 8 – Budgeting and Cost Allocation

- A. MRCOG shall receive federal funding for metropolitan planning for MRMPO in accordance with 23 CFR 420.109.
- B. MRCOG agrees to provide the required match for funds received from the FHWA and FTA for metropolitan planning purposes. The MRCOG share may be in cash, or as in-kind services provided by Local Governments. In-kind services must be reduced to a cash equivalent basis using a format acceptable to NMDOT and must be described in the UPWP.
- C. MRMPO shall develop a Unified Planning Work Program (UPWP) in accordance with 23 450.308 and other applicable federal regulations and the *NMDOT Planning Procedures Manual*. Once approved by NMDOT and the FHWA and FTA, the UPWP shall be the basis for project authorization by the USDOT thereby establishing eligibility for reimbursement of allowable costs.
- D. Reimbursement from NMDOT shall be on the basis of quarterly (or other agreed upon period) billings submitted by the MRCOG. The allowable costs shall be in

- accordance with the cost principles and procedures set forth federal regulations. MRCOG shall comply with all requirements of 2 CFR 200 and shall submit reimbursement in accordance to the NMDOT Planning Procedures Manual.
- E. In accordance with the *NMDOT Planning Procedures Manual*, MRMPO shall develop, prepare, and distribute for review a draft UPWP. Upon receipt of comments from NMDOT, MRMPO shall prepare a final UPWP to be approved by the MTB and submitted to NMDOT for final approvals. When approved by NMDOT, FHWA and FTA, the UPWP shall be the approved Budget Document for that fiscal year(s). Modification to the UPWP and Budget shall be done in accordance with the *NMDOT Planning Procedures Manual*.
- F. Invoices shall be submitted to NMDOT in accordance with the *NMDOT Planning Procedures Manual*.
- G. MRCOG shall be responsible for applicable New Mexico gross receipts taxes or local option taxes for services rendered.
- H. MRCOG shall collect funds to provide the required matching funds for each category of federal funds from the various Parties to this agreement in accordance to the fee structure approved by the Mid-Region Council of Governments Board of Directors.
- I. The terms of this Agreement are contingent upon sufficient appropriations being made by the Legislature of New Mexico and the Congress of the United States of America for the performance of this Agreement. If sufficient appropriations are not made by the Legislature or Congress, this Agreement shall terminate upon written notice being given by NMDOT to the MRCOG. NMDOT's decision as to whether sufficient appropriations are available shall be accepted by the MRCOG and shall be final.

## Section 9 - Continuous, Cooperative, and Comprehensive Planning

The Parties agree to engage in a continuous, cooperative and comprehensive planning process to fulfill the requirements of 23 CFR 450. Therefore, the Parties agree to share information and data required to meet the metropolitan transportation planning process and requirements of 23 CFR 450.

#### Section 10 – Status of MRCOG

Nothing in this Agreement shall be deemed to limit MRCOG from entering into agreements with other agencies and jurisdictions to conduct, perform, or assist in other federal, state, local, tribal, or regional planning efforts in areas such as, but not limited to, land-use, transportation, zoning, comprehensive planning, mapping, socioeconomic and/or demographic studies and analyses, natural resources, economic development, agriculture, traffic studies, or any field which is included in the duties and responsibilities of the other divisions of MRCOG.

#### Section 11 – Assignment

MRCOG shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior approval of NMDOT.

#### Section 12 – Conflict of Interest

The MRCOG warrants that its employees presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner of degree with the performance of services required under this Agreement.

## **Section 13 - Liability**

The MRCOG shall indemnify and hold the State harmless for all claims, damages, and liability or potential liability arising from the negligent acts, errors or omission of itself, its agents, subcontractors or employees under this Agreement. The MRCOG agrees to carry comprehensive general liability insurance.

#### **Section 14 – Third Party Beneficiary Clause**

This Agreement is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

#### Section 15 - Notice

The State of New Mexico Procurement Code, Sections 13-1-1 et. seq. NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

## Section 16 - Equal Opportunity Compliance

MRCOG agrees to abide by all Federal and State laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, MRCOG agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, sexual orientation, age, or disability, be excluded from employment with, or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If MRCOG is found to be not in compliance with these requirements during the life of this Agreement, MRCOG agrees to take appropriate steps to correct these deficiencies.

#### **Sections 17 – Force Majeure**

A Party shall be excused from the performance under this Agreement for any period that the Party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the Party has prudently and promptly acted to take any and all steps that are within the Party's control to ensure performance. Subject to this provision, such nonperformance shall not be deemed a default or a ground for termination.

## Section 18 - Severability

It is hereby declared to be the intention of the Parties that the articles, sections, subsections, paragraphs, sentences, clauses, and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph, section, subsection, or article of this Agreement shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining part of this Agreement.

#### Section 19 - Conflict Resolution

In the event of disagreement between the Parties with respect to the duties or processes of metropolitan transportation planning, it is agreed that the Parties will resolve any disagreements at the lowest possible level. If a disagreement cannot be resolved at the lowest possible level, the Conflict Resolution hierarchy in the following table will be followed. If other agencies are involved, personnel from equivalent organizational levels will be included in the conflict resolution process.

Level 1 Party to Party

The Parties to the disagreement agree to discuss the issue(s) and attempt to resolve the disagreement.

Level 2 Technical Committee

The Parties to the disagreement agree to elevate the issue(s) and attempt to resolve the disagreement at the appropriate technical committee at the next scheduled meeting.

Level 3 Metropolitan Transportation Board

The Parties to the disagreement agree to discuss the issue(s) and attempt to resolve the disagreement at the next scheduled meeting.

Level 4 Parties' Governing Bodies

The issue(s) shall be discussed between the affected Parties' governing bodies.

Mediation and facilitation may be used at any level to help expedite resolution of the disagreement(s).

## Section 20 - Effectiveness of this Agreement

The quadrennial certification review required under 23 CFR 450.334 shall be utilized to assess the effectiveness of this Agreement.

## Section 21 - Amendment

This Agreement shall not be altered, modified, or amended except as noted herein.

This Agreement may be supplemented, renegotiated or amended to meet changing conditions as recommended by the Metropolitan Transportation Board. This may include, but not be limited to the following:

- A. The passage of a new federal transportation bill that includes new or significantly revised requirements for metropolitan planning.
- B. A request for redesignation of the metropolitan planning organization in accordance with 23 CFR 450.310(g), (h), (k) and (l).
- C. Findings of Corrective Actions or Recommendations from a federal Certification Review.

Amendments to this Agreement must be approved by an affirmative vote by three-fourths  $(\frac{3}{4})$  of the full voting members of the MTB.

#### Section 22 – Disposition of Assets Upon Dissolution

The Parties agree that if the Mid-Region Council of Governments is dissolved or, for whatever reason otherwise ceases to exist, or no longer functions as the metropolitan planning organization, any remaining funds and equipment associated with the MPO will be disposed of

#### as follows:

- A. Any remaining funds collected by MRCOG for MPO functions will be returned to the Parties in proportion to their contribution;
- B. Any remaining equipment purchased with contributed funds will be distributed to contributing Parties in proportion to the contribution made; and
- C. Any remaining equipment and office furniture will remain the property of MRCOG.

APPROVED by the Metropolitan Transportation Board of the Mid-Region Metropolitan Planning Organization on the 20<sup>th</sup> day of May 2016.

Debbie O'Malley

Chairperson, Metropolitan Transportation Board

APPROVED by the Board of Directors of the Mid-Region Council of Governments of New Mexico on the 9<sup>th</sup> day of June 2016.

M. Steven Anaya

Chairperson, MRCOG Board of Directors

Dewey V. Cave

**ATTES** 

Executive Secretary, Metropolitan Transportation Board Executive Director, Mid-Region Council of Governments